

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

WILLIAM NEUENSWANDER,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:05-CV-82
	:	
UNITED STATES OF AMERICA,	:	
Defendant.	:	
	:	

RULING ON MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Paper 24)

Plaintiff William Neuenswander brings this medical malpractice action against the United States pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b), alleging that medical personnel at the White River Junction Veterans Administration Medical Center ("VAMC") committed malpractice when they failed to properly treat his skin disease. The case is currently before the Court on the Government's motion to dismiss for lack of subject matter jurisdiction. (Paper 8.)

The Magistrate Judge filed his thorough and well-reasoned Report and Recommendation ("R&R") on February 3, 2006, recommending this Court deny the motion. (Paper 24.) The Court has reviewed the R&R and the Government's objections (Paper 25), and has considered de novo those portions of the R&R to which objections pertain. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C). Because the Magistrate Judge held a lengthy hearing on the motion to dismiss on January 17, 2006 and the

Government presented little new information with its objections, the Government's request for a hearing on its objections (Paper 25 at 27) is DENIED.

The Court, moreover, finds the Government's objections to be without merit. In its foremost objection, the Government argues that the R&R misstated, and thereby heightened, the applicable standard requiring the plaintiff to know that Government doctors caused -- rather than "probably caused" or "may have caused" -- the worsening of his condition. (Paper 25 at 13.) Although the R&R did not fully state the language of the standard, the Court concludes that the Magistrate Judge properly set out the nuances of the standard and undertook its analysis using the correct standard. Moreover, applying the correct standard, the Court reaches the same result.

The Court therefore AFFIRMS, APPROVES and ADOPTS the Magistrate Judge's Report and Recommendation, see 28 U.S.C. § 636(b)(1). The Government's motion to dismiss is DENIED. The matter is hereby returned to the Magistrate Judge for further proceedings.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 22nd day of March, 2006.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge